

be transferred, for trial purposes, by the judge or judges of the transferee district to whom the action was assigned to the transferee or other district in the interest of justice and for the convenience of the parties and witnesses.

"(2) Any action transferred for trial purposes under paragraph (1) shall be remanded by the panel for the determination of compensatory damages to the district court from which it was transferred, unless the court to which the action has been transferred for trial purposes also finds, for the convenience of the parties and witnesses and in the interests of justice, that the action should be retained for the determination of compensatory damages."

### SEC. 3. EFFECTIVE DATE.

The amendments made by this Act shall apply to any civil action pending on or brought on or after the date of the enactment of this Act.

Mr. LEAHY. Mr. President, I am pleased that the Senate is about to pass S. 1748, the Multi-District Jurisdiction Act of 1999, and H.R. 2112, as amended by the Hatch-Leahy substitute during its consideration in the Senate Judiciary Committee. Our substitute amendment is the text of S. 1748, the Multi-District Jurisdiction Act of 1999, which the distinguished Chairman of the Senate Judiciary Committee and I, along with Senators GRASSLEY, TORRICELLI, KOHL, and SCHUMER, introduced last week. Our bipartisan legislation is needed by Federal judges across the country to restore their power to promote the fair and efficient administration of justice in multi-district litigation.

Current law authorizes the Judicial Panel on Multi-District Litigation to transfer related cases, pending in multiple Federal judicial districts, to a single district for coordinated or consolidated pretrial proceedings. This makes good sense because transfers by the Judicial Panel on Multi-District Litigation are based on centralizing those cases to serve the convenience of the parties and witnesses and to promote efficient judicial management.

For nearly 30 years, many transferee judges, following circuit and district court case law, retained these multi-district cases for trial because the transferee judge and the parties were already familiar with each other and the facts of the case through the pretrial proceedings. The Supreme Court in *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998), however, found that this well-established practice was not authorized by the general venue provisions in the United States Code. Following the *Lexecon* ruling, the Judicial Panel on Multi-District Litigation must now remand each transferred case to its original district at the conclusion of the pretrial proceedings, unless the case is already settled or otherwise terminated. This new process is costly, inefficient and time consuming.

The Multi-District Jurisdiction Act of 1999 seeks to restore the power of transferee judges to resolve multi-district cases as expeditiously and fairly as possible. Our bipartisan bill amends section 1407 of title 28 of the United States Code to allow a transferee judge to retain cases for trial or transfer

those cases to another judicial district for trial in the interests of justice and for the convenience of parties and witnesses. The legislation provides transferee judges the flexibility they need to administer justice quickly and efficiently. Indeed, our legislation is supported by the Administrative Office of the U.S. Courts, the Judicial Conference of the United States and the Department of Justice.

In addition, we have included a section in our bill to ensure fairness during the determination of compensatory damages by adding the presumption that the case will be remanded to the transferor court for this phase of the trial. Specifically, this provision provides that to the extent a case is tried outside of the transferor forum, it would be solely for the purpose of a consolidated trial on liability, and if appropriate, punitive damages, and that the case must be remanded to the transferor court for the purposes of trial on compensatory damages, unless the court to which the action has been transferred for trial purposes also finds, for the convenience of the parties and witnesses and in the interests of justice, that the action should be retained for the determination of compensatory damages. This section is identical to a bipartisan amendment proposed by Representative Berman and accepted by the House Judiciary Committee during its consideration of similar legislation earlier this year.

Multi-district litigation generally involves some of the most complex fact-specific cases, which affect the lives of citizens across the nation. For example, multi-district litigation entails such national legal matters as asbestos, silicone gel breast implants, diet drugs like fen-phen, hemophiliac blood products, Norplant contraceptives and all major airplane crashes. In fact, as of February 1999, approximately 140 transferee judges were supervising about 160 groups of multi-district cases, with each group composed of hundreds, or even thousands, of cases in various stages of trial development.

But the efficient case management of these multi-district cases is a risk after the *Lexecon* ruling. Judge John F. Nangle, Chairman of the Judicial Panel on Multi-District Litigation, recently testified before Congress that: "Since *Lexecon*, significant problems have arisen that have hindered the sensible conduct of multi-district litigation. Transferee judges throughout the United States have voiced their concern to me about the urgent need to enact this legislation."

Mr. President, Congress should listen to the concerned voices of our Federal Judiciary and swiftly send the Multi-District Jurisdiction Act of 1999 to the President for his signature into law.

Mr. CRAIG. Mr. President, I ask unanimous consent that the committee substitute be agreed to, the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The committee substitute was agreed to.

The bill (H.R. 2112), as amended, was read the third time and passed.

### ORDERS FOR THURSDAY, OCTOBER 28, 1999

Mr. CRAIG. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until the hour of 9:30 a.m. on Thursday, October 28. I further ask unanimous consent that on Thursday, immediately following the prayer, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate then proceed to a period of morning business, with Senators permitted to speak for up to 5 minutes each, with the following exceptions: Senator DURBIN, or designee, 9:30 to 10 a.m.; Senator THOMAS, or designee, 10 to 10:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

### PROGRAM

Mr. CRAIG. Mr. President, for the information of all Senators, the Senate will be in a period of morning business from 9:30 to 10:30 a.m. Following morning business, the Senate will resume consideration of the African trade bill. As a reminder, cloture has been filed on the substitute amendment to the trade bill and, therefore, all first-degree amendments must be filed to the substitute by 1 p.m. tomorrow. Also, pursuant to rule XXII, that cloture vote will occur 1 hour after the Senate convenes on Friday, unless an agreement is made between the two leaders.

Currently, Senator ASHCROFT's amendment to establish the position of chief agriculture negotiator is pending. It is hoped that an agreement regarding further amendments can be made so the Senate can complete action on this important legislation.

The Senate may also consider any legislative or executive items cleared for action during tomorrow's session of the Senate.

### ORDER FOR ADJOURNMENT

Mr. CRAIG. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order, following the remarks of the Senator from Oregon, Mr. WYDEN.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. Reserving the right to object, I say to my colleague from Idaho, I believe the junior Senator from Washington also wishes to make a statement after the Senator from Oregon. And I wish to make a statement